

Linda F. Cantor (CA Bar No. 153762)
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, California 90067-4100
Telephone: 310-277-6910
Facsimile: 310-201-0760
Email: lcantor@pszjlaw.com

Counsel for Weneta M.A. Kosmala, Chapter 7 Trustee for
The Tulving Company, Inc.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

THE TULVING COMPANY, INC., a
California corporation,

Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**TRUSTEE'S RESPONSE TO MOTION
OPPOSING CERTAIN ASPECT OF COIN
DISTRIBUTION AND PROCEDURES OF
TRUSTEE IN THE MATTER OF
DISPOSING CERTAIN ASSETS FROM
THE TULVING CO. TO
VICTIM/CREDITORS**

Hearing:

Date: July 13, 2017
Time: 10:30 a.m.
Place: 411 West Fourth Street
Courtroom 5A
Santa Ana, CA 92701

Weneta M.A. Kosmala, the duly appointed chapter 7 trustee (the "Trustee") for The Tulving Company, Inc. (the "Debtor"), in the above-entitled chapter 7 case, hereby responds to the *Motion Opposing Certain Aspect Of Coin Distribution And Procedures Of Trustee In The Matter Of Disposing Certain Assets From The Tulving Co. To Victim/Creditor* [Dkt. No. 675] (the "Opposition"), and respectfully represents as follows.

1 The Opposition alleges that the Trustee is seeking to “grossly inflate” the value of the 15,580
2 Error Coins that are the subject of the *Motion For Order (I) Approving Coin Valuations And*
3 *Distribution Schedule Of Error Coins To Victim/ Creditors, And (II) Granting Related Relief*
4 *Pursuant To Sections 105 And 363 Of The Bankruptcy Code* [Dkt. No. 667] (the “Motion”¹), as if
5 the Error Coin values were chosen at random by the Trustee. The Opposition completely ignores the
6 fact that each of the Error Coins was individually graded by Pacific Coin Grading Services
7 (“PCGS”), a renowned coin valuation firm using a detailed grading process.

8 As described in the Distribution Modification Motion approved by Order of the Court², and
9 as represented in the PCGS website, at PCGS each coin is separately examined and graded by a
10 series of coin graders (two, at minimum and in most instances three or more grading experts), who
11 enter independent grade determinations in a computer database until a consensus is reached and the
12 final grade assigned. After the coins have been graded, the value of each graded coin is determined
13 by reference to the PCGS Guide, consisting of the average dealer asking prices for PCGS-graded
14 coins. The prices are compiled from various sources including dealer ads in trade papers, dealer
15 fixed price lists and website offerings, significant auctions and activity at major coin shows. Dealer
16 specialist and expert collectors provide pricing input as well. This is the process that took place
17 during the several months that PCGS graded the 15,580 Error Coins.

18 The Opposition provides no evidentiary support or legitimate challenge to the PCGS
19 valuation. Having none, it argues that market saturation would reduce the value of the Error Coins,
20 as noted by the prior trustee. But, that is very reason that the Trustee determined not to sell all the
21 Error Coins at once. Victim/Creditors may keep their Error Coins, sell them, or make their own
22 determinations with respect to the Error Coins based on market conditions or any other criteria they
23 choose. As noted above, the PCGS Price Guide is based on average dealer asking prices for PCGS-
24 graded coins, not a forced liquidation.

25 ¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

26 ² See Notice Of Motion And Motion For Order Authorizing The Trustee To (I) Retain GreatCollections.Com d/b/a Great
27 Collections As Auctioneer, (II) Modify, In Part, Asset Distribution Plan, And (III) Set New Opt-Out Deadline For
28 Creditors To Determine Whether To Receive Error Coins In Partial Payment Of Their Claims And Sell Coins Not
Distributed To Creditors Free And Clear Of Liens, Claims And Interests; Memorandum Of Points And Authorities In
Support Thereof; Declarations Of Weneta M.A. Kosmala And Ian Russell [Dkt. No. 623] (the “Distribution Modification
Motion”) and Order thereon [Dkt. No. 634].

1 The Motion also seeks to treat the distribution of Error Coins as cash distributions, reducing
2 the outstanding claim amount of each Victim/Creditor by the value of the Error Coins distributed to
3 each such creditor, ranging from an 18.73% to 18.77% claim reduction. Victim/Creditors will retain
4 the remainder of their claims (over 81%). However, any Victim/Creditor may “opt-out” and receive
5 no distribution of Error Coins to the extent they prefer to retain the full nominal amount of their
6 claims.

7 The Opposition objects to the treatment of the Error Coin distributions as cash distributions.
8 While it is true that the Error Coin distribution is an “in-kind” distribution rather than a cash
9 distribution (as previously authorized by this Court), there must be some mechanism to equalize the
10 treatment of all Victim/Creditor claims. If there were additional funds available for distribution to
11 Victim/Creditors and no credit given to those who already received Error Coins, the claims of
12 Victim/Creditors who opted-out of their Error Coin allocated distribution would be unfairly diluted.
13 Under the circumstances, it is only proper that the Victim/Creditors’ claim amounts be reduced by
14 the value of the Error Coins received by them.

15 It is noteworthy that of the hundreds of Victim/Creditors to receive Error Coin distributions
16 through the Motion, very few determined to opt-out and only one Victim/Creditor has opposed the
17 relief set forth in the Motion. The overwhelming majority of Victim/Creditors clearly supports the
18 Motion and wish to receive a distribution of Error Coins on account of their claims.

19 Based on the foregoing and for the reasons set forth in the Motion, the Motion should be
20 granted and the Opposition should be overruled by the Court.

21 Dated: July 6, 2017

PACHULSKI STANG ZIEHL & JONES LLP

22
23 By /s/ Linda F. Cantor
Linda F. Cantor

24
25 Counsel for Weneta M.A. Kosmala, Chapter 7
Trustee
26
27
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document **TRUSTEE'S RESPONSE TO MOTION OPPOSING CERTAIN ASPECT OF COIN distribution AND PROCEDURES OF TRUSTEE IN THE MATTER OF DISPOSING CERTAIN ASSETS FROM THE TULVING CO. TO VICTIM/CREDITORS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **July 6, 2017**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **July 6, 2017**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **July 6, 2017**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Federal Express

The Honorable Erithe A. Smith
United States Bankruptcy Court - Central District of California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 6, 2017

Janice G. Washington

/s/Janice G. Washington

Date

Printed Name

Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

8:14-bk-11492-ES Notice will be electronically mailed to:

Wesley H Avery on behalf of Consumer Privacy Ombudsman Wesley H Avery
wamiracle6@yahoo.com, wavery@rpmlaw.com

Candice Bryner on behalf of Interested Party Candice Bryner
candice@brynerlaw.com

Philip Burkhardt on behalf of Other Professional Karen Duddleston
phil@burkhardtandlarson.com, stacey@burkhardtandlarson.com

Stephen L Burton on behalf of Attorney Stephen L. Burton
steveburtonlaw@aol.com

Frank Cadigan on behalf of U.S. Trustee United States Trustee (SA)
frank.cadigan@usdoj.gov

Linda F Cantor, ESQ on behalf of Other Professional Pachulski Stang Ziehl & Jones LLP
lcantor@pszjlaw.com, lcantor@pszjlaw.com

Linda F Cantor, ESQ on behalf of Trustee R. Todd Neilson (TR)
lcantor@pszjlaw.com, lcantor@pszjlaw.com

David L Gibbs on behalf of Creditor Kenneth W Stach
david.gibbs@gibbslaw.com, ecf@gibbslaw.com

Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)
nancy.goldenberg@usdoj.gov

Lawrence J Hilton on behalf of Creditor Jeffrey Roth
lhilton@oneil-llp.com, ssimmons@oneil-llp.com; kdonahue@oneil-llp.com

John H Kim on behalf of Creditor Ford Motor Credit Company LLC
jkim@cookseylaw.com

R. Todd Neilson (TR)
tneilson@brg-expert.com, sgreenan@brg-expert.com; tneilson@ecf.epiqsystems.com; ntroszak@brg-expert.com

Jason S Pomerantz on behalf of Trustee R. Todd Neilson (TR)
jspomerantz@pszjlaw.com, jspomerantz@pszjlaw.com

Nanette D Sanders on behalf of Creditor Levon Gugasian
becky@ringstadlaw.com

Richard C Spencer on behalf of Interested Party Courtesy NEF
rspencer@rspencerlaw.com

United States Trustee (SA)gov

2. SERVED BY UNITED STATES MAIL

Debtor

The Tulving Company Inc
2049 Century Park East, Suite 2525
Los Angeles, CA 90067-3225

Counsel for Debtor

Andrew S Bisom
The Bisom Law Group
8001 Irvine Center Drive, Suite 1170
Irvine, CA 92618

James F. Wyatt, III
Wyatt & Blake, LLP
435 East Morehead Street
Charlotte, NC 28202

Laurence P Nokes on behalf of Interested
Party John Frankel
Nokes & Quinn
410 Broadway St Ste 200
Laguna Beach, CA 92651

Kevin Zolot
Assistant U.S. Attorney
United States Attorney's Office
Western District North Carolina
227 West Trade Street
Charlotte, NC 28202

Benjamin Bain-Creed
Assistant United States Attorney
Florida Bar #0021436
Suite 1650, Carillon Building
227 West Trade Street
Charlotte, North Carolina 28202

Accountants for Landlord

Brent Murdoch
Murdoch & Morris, LLP
114 Pacifica, Ste. 320
Irvine, CA 92618

Interested Party

Frye & Hsieh
Douglas J Frye Esquire
24955 Pacific Coast Highway # A201
Malibu, CA 90265

Counsel for Creditor Levon Gugasian

Nanette D. Sanders, Esq.
Ringstad & Sanders LLP
2030 Main Street
Suite 1600
Irvine, CA 92614

Harlene Miller, Esq.
Harlene Miller Law
17910 Sky Park Circle, Suite 105
Irvine, CA 92614

On the Rocks Jewelry & Rare Coins
Attn: David Halpin and Desirea Sloan
207 N. El Camino Real
San Clemente, CA 92672

Kenneth D. Christman
1965 Loma Linda Lane
Dayton, Ohio 45459

Roger F. Friedman
Gerard M. Mooney
Rutan & Tucker
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626-1931